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11
12 **UNITED STATES DISTRICT COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 MARK DISALLE, an individual,

16 Plaintiff,

17 v.

18 ALBERTO LENSI, an individual;
19 TRANS-AMERICAN FILMS
20 INTERNATIONAL
21 CORPORATION, a Delaware
22 corporation, and DOES 1-10,

23 Defendants.

Case No. 22-cv-02152-SSS-PVCx

JOINT RULE 26(f) REPORT

Conference Date: September 16,
2022

Time: 2:00 p.m.

Ctrm: 2

Judge: Hon. Sunshine S. Sykes

Pursuant to Federal Rule of Civil Procedure 26(f)(3) and Rule 26-1 of the Local Rules of the Central District of California, Plaintiff Mark DiSalle (“Plaintiff”) and Defendants Alberto Lensi and Trans-American Films International Corporation (“Defendants”) submit the following joint report and discovery plan.

a. STATEMENT OF THE CASE

Description of Events Underlying Action: Plaintiff originated and produced the iconic 1988 feature motion picture *Bloodsport* based upon his original screenplay entitled *Bloodsport*. Plaintiff retained valuable intellectual property rights in *Bloodsport*, including without limitation motion picture “remake” rights. Plaintiff had entered into an option/purchase agreement regarding the Property with a third party with whom Defendants had partnered, which agreement expired on its own terms. When Plaintiff declined to renew the agreement, as was his right, Defendants asserted, for the first time, that Plaintiff had no Property interest, contrary to the agreement itself and Defendants’ prior conduct. Plaintiff filed this action to clarify his rights in his Property and *Bloodsport* and to remove the cloud placed on his rights by Defendants.

Defendants: Defendants deny and dispute Plaintiff’s claims and contend that they own the rights to *Bloodsport*. Plaintiff transferred the limited rights that he had to Defendants (through a series of transactions). Plaintiff has no right in *Bloodsport* of any kind. Plaintiff and Counter-Defendant intentionally interfered with Defendants and Counter-Claimants contract with Universal and negligently interfered with Defendants economic relations with Universal.

Plaintiff:

1. Declaratory Relief as to the parties respective intellectually property rights in and to Plaintiff’s original screenplay entitled “Bloodsport” (“Property”), which served as the basis for the iconic 1988 motion picture

1 *Bloodsport*, starring Jean Claude Van Damme, which Plaintiff produced.

2 Plaintiff seeks a declaratory judgment that he retained and owns the remake and
3 sequel rights (other than a single previously licensed sequel) to his original
4 Property and a common law “Bloodsport” trademark mark;

5 **2. Federal Unfair Competition pursuant to Section 43(a) of the**
6 **Lanham Act, 15 U.S.C. §1125(a)** for Defendants’ improper clouding Plaintiff’s
7 common law *Bloodsport* mark. Plaintiff seeks preliminary and permanent
8 injunctive relief and to recover Defendants’ profits, enhanced profits, Plaintiff’s
9 actual damages and reasonable attorneys’ fees and costs under 15 U.S.C. §§
10 1125(c), 1116 and 1117;

11 **3. Federal Fraudulent Trademark Registration** for Defendants’
12 unauthorized and false registration of purported “Bloodsport” trademarks with
13 the USPTO. Plaintiff seeks damages under the Lanham Act, 15 U.S.C. § 1120,
14 for the direct and proximate harm suffered due to Defendants misrepresentations
15 and the consequent impairment of Plaintiff’s intellectual property;

16 **4. Federal Trademark Dilution** for Defendants’ dilution,
17 tarnishment and degradation of Plaintiff’s mark in commerce. Plaintiff seeks
18 preliminary and permanent injunctive relief and to recover Defendants’ profits,
19 enhanced profits, Plaintiff’s actual damages and attorneys’ fees and costs under
20 15 U.S.C. §§ 1125(c), 1116 and 1117; and

21 **5. Federal Common Law Trademark Infringement** for Defendants’
22 infringement of Plaintiff’s common law *Bloodsport* mark.

23 **Defendants:**

24 **1. Declaratory Relief** as to the use and ownership of the rights in the
25 film *Bloodsport*, the derivative works from the film and trade mark rights;
26 Defendants and Counter-Claimants contend that they own all rights in *Bloodsport*.

27 **2. Intentional Interference with Contract** for Plaintiff and Counter-
28

1 Defendant's intentional interference with the contract between Defendants and
 2 Counter-Claimants intentional interference with the contract between Defendants
 3 and Counter-Claimants and Universal to produce a sequel to *Bloodsport*; and

4 **3. Negligent Interference with Economic Relations** for Plaintiff and
 5 Counter-Defendants interference with Defendants and Counter-Claimants'
 6 business and economic relationship with Universal.

7 On the Second and Third causes of action, Defendants and Counter-
 8 Claimants have strong counter claims for Intentional Interference with Contract
 9 and Negligent Interference with Economic Relations. However, Plaintiff has
 10 limited funds, and any judgment would be a pyrrhic victory. Defendants are
 11 doing everything possible to limit the scope of this case. Plaintiff on the other
 12 hand has told Defendants that he will make this case as expensive as possible.
 13 Given these relative positions, Defendants have stated that they would dismiss
 14 the two interference Causes of Action because they serve no purpose, given the
 15 judgment proof nature of Plaintiff and Counter-Defendant. Plaintiff has filed a
 16 frivolous Anti-SLAPP motion, which is addressed below, on these two causes of
 17 action.

18 **Defendants Response to Plaintiff's Summary of his Claims:**

19 As to the declaratory relief claim, as noted, Plaintiff has no rights in the
 20 *Bloodsport* franchise. On the trademark claims, Plaintiff did not have a
 21 trademark. It is well settled a party cannot have trademark rights in a single
 22 motion picture. Moreover, plaintiff transferred all rights.

23 **b. SUBJECT MATTER JURISDICTION**

24 This Court has subject matter jurisdiction pursuant to the Lanham
 25 Act, 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a), and 1367(a), and the
 26 Declaratory Judgment Act, 28 U.S.C. § 2201. This Court also has subject matter
 27 jurisdiction pursuant to 28 U.S.C. §§ 1332(a)(1) and (c)(1), because there is
 28

1 complete diversity of citizenship between Plaintiff and Defendants, and the
2 amount in controversy exceeds \$75,000.

3 **c. LEGAL ISSUES**

4 This is an action for relief concerning the validity and ownership of
5 trademark and other intellectual property rights with respect to the *Bloodsport*
6 film franchise. Plaintiff contends that Defendants improperly clouded his
7 common law trademark and his other intellectual property rights in *Bloodsport*.
8 Defendants contend that Plaintiff has no rights in *Bloodsport*, tortiously
9 interfered with their contract with Universal to produce another *Bloodsport* film
10 and deny Plaintiff's contentions.

11 **d. PARTIES AND EVIDENCE**

12 The Plaintiff and Counterclaim-Defendant is Mark DiSalle, an individual;
13 the Defendants and Counterclaimants are Alberto Lensi, an individual, and
14 Trans-American Films International Corporation, a Delaware corporation, and
15 additional Doe Defendants 1-10. Alberto Lensi is the principal of Trans-
16 American Films International Corporation.

17 Aside from the parties themselves, Ed Pressman and a designee for
18 Universal will likely be witnesses in this case.

19 Key documents in the case include the contracts involving the parties,
20 correspondence concerning those contracts, and Defendants' trademark
21 registrations and applications for "Bloodsport."

22 **e. DAMAGES**

23 Plaintiff's damage estimate ranges from \$15,000,000-20,000,000.

24 Defendants' position regarding Plaintiff's damages is that these estimates
25 are simply not realistic for this independent film on which Plaintiff only made
26 \$100,000 for the first film. On the subsequent films he earned \$25,000.
27 Plaintiff has no damages, but if he did prevail, he would win \$25,000 at most.

1 **f. INSURANCE**

2 The parties are unaware of any applicable insurance coverage at this time.

3 **g. MOTIONS**

4 **Plaintiff:** Plaintiff has moved to strike Defendants' Second and Third
5 Counterclaims for Intentional Interference with Contract and Negligent
6 Interference with Economic Relations, respectively, and intends to move to
7 sanction Defendants for their frivolous pleadings, and accordingly, the
8 amendment of pleadings is likely. Aside from motions to strike and for
9 sanctions, Plaintiff reserves the right to amend or seek leave to amend as
10 applicable.

11 **Defendants:** Plaintiff's position on the motions is not well taken. Yes,
12 Plaintiff filed an Anti-SLAPP motion to the Second and Third Causes of Action
13 in the Counter-Claim, but that is about all that is accurate. The Anti-SLAPP
14 motion is frivolous. Plaintiff simply cannot meet the first prong, and counsel for
15 Defendants sent Plaintiff a letter to take the motion off calendar. The bottom
16 line is Defendant are willing to dismiss those causes of action solely because
17 Plaintiff is judgment proof and has no money. Defendants need to find ways to
18 limit what is a relatively small case in the expenses relating to same. For that
19 reason, Defendants offered to dismiss the Second and Third Causes of Action
20 and still plans to dismiss those after Defendants win the Anti-SLAPP. Plaintiff
21 refused to take the Anti-SLAPP off calendar and demanded his attorney's fees.
22 Oddly, the Anti-SLAPP statute allows for a defendant to recover his fees when
23 an Anti-SLAPP Motion is made like this.

24 The part about filing a rule 11 motion is equally not well taken.
25 Defendants already stated that they will be dismissing those causes of action
26 (again so we because the plaintiff is uncollectible and there is no point in
27 increasing costs).

1 **h. DISPOSITIVE MOTIONS**

2 **Plaintiff:** Plaintiff has filed an anti-SLAPP motion, set to be heard on
 3 September 23, 2022, requesting an order of this Court striking Defendants'
 4 counterclaims for Intentional Interference with Contract and Negligent
 5 Interference with Economic Relations because such claims seek to punish
 6 Plaintiff for conduct protected pursuant to Cal. Code Civ. Proc. § 425.16.
 7 Plaintiff further expects to engage in dispositive motion practice, including
 8 motion(s) for summary judgment.

9 **Defendants:** Defendants deny and dispute Plaintiff's allegations
 10 concerning his meritless Anti-SLAPP Motion. Plaintiff's Motion is without
 11 merit and should be denied as will explained in Defendant's Opposition.

12 Defendants intend to file a Rule 56 Motion as Plaintiff has no rights
 13 claimed concerning *Bloodsport* at the close of discovery.

14 **i. MANUAL FOR COMPLEX LITIGATION**

15 At this time, the parties do not believe all or part of the procedures of the
 16 Manual for Complex Litigation should be utilized.

17 **j. STATUS OF DISCOVERY**

18 No party has yet propounded any discovery in this case. The parties do
 19 not anticipate any discovery disputes at this time.

20 **k. DISCOVERY PLAN**

21 **Proposed Discovery Plan:** The parties are to conduct discovery in
 22 accordance with the Federal Rules of Civil Procedure and the Local Rules of the
 23 Central District of California. At this time, the parties do not request that the
 24 Court limit discovery into any particular subject matters. Plaintiff intends to seek
 25 discovery of facts concerning Defendants' relationship with Ed Pressman and
 26 Pressman Film, Defendants' attempts to make a *Bloodsport* remake/sequel,
 27 including with Universal Pictures, and Defendants' trademark and copyright
 28

claims, registrations, and applications. Defendants intend to seek discovery of Plaintiff's contentions and discovery from Ed Pressman and Pressman Films, Dux and Plaintiff's interference with the contract with Universal Pictures and interference with Defendants and Counter-Claimants economic relationship with Universal. The parties agree that this section is without prejudice to or limitation of any party's ability to take relevant and appropriate discovery as well as any party's ability to oppose any requested discovery, and all parties reserve all rights with respect thereto.

Issues of Disclosure, Discovery, or Preservation of ESI: The parties agree to meet and confer to negotiate a protocol for the production of any Electronically Stored Information ("ESI"), to the extent the need for ESI arises.

The parties stipulate to exchange the initial disclosures required by Rule 26(a) on or before October 14, 2022. The disclosures shall contain the information identified in Rule 26(a)(1) and shall be supplemented as required by Rule 26(e)(1). The parties do not seek any changes to the disclosure requirements under Rule 26(a), apart from their timing.

Proposed Limitations on Discovery:

Plaintiff: Plaintiff proposes no changes to the limitations on discovery imposed under the Federal or Local Rules.

Defendants: In terms of discovery limitations, Defendants believe that this should be limited by protective order. The Plaintiff has made less than \$200,000 on all the *Bloodsport* movies combined, and there have been four. What Plaintiff would make for a sequel is limited and certainly would never exceed a few hundred thousand dollars. Thus, relatively speaking, this case is very small and there should be a protective order of some kind to keep discovery and discovery disputes reasonable.

Separately, it should be noted that the Plaintiff threatened settlement that

1 Plaintiff would make the case very expensive. That appears to be the strategy of
2 Plaintiff's counsel who is no stranger to this court. The idea is to make a case
3 very expensive and force a settlement. We would like to discuss a protective
4 order.

5 **I. FACT DISCOVERY CUT-OFF**

6 Plaintiff proposes that May 12, 2023 be set as the fact discovery cut-off
7 date. Defendants propose June 12, 2023 as the cut-off date.

8 **m. EXPERT DISCOVERY**

9 Plaintiff proposes that June 16, 2023 be set as the expert discovery cut-off
10 date. Defendants propose July 17, 2023 as the cut-off date.

11 **n. SETTLEMENT CONFERENCE/ ALTERNATIVE DISPUTE**
12 **RESOLUTION**

13 The parties have engaged in some settlement discussions but have been
14 unable to reach agreement. Plaintiff proposes ADR Procedure No. 2 (mediation
15 with a neutral selected from the Court Mediation Panel). Defendants believe
16 that it would be more fruitful to go through a private mediator with each party
17 splitting the costs.

18 **o. TRIAL ESTIMATE**

19 The parties have agreed to trial by jury. The estimated trial length is four
20 days.

21 **p. TRIAL COUNSEL**

22 Marc Toberoff is trial counsel for Plaintiff. Michael Kernan and Paul
23 Katrinak are joint trial counsel for Defendants. Plaintiff anticipates calling four
24 witnesses. Defendants anticipate calling 10 witnesses.

25 **q. INDEPENDENT EXPERT OR MASTER**

26 The parties do not request the appointment of an independent expert or
27 master at this time.

1 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other
2 signatories listed, and on whose behalf the filing is submitted, concur in the
3 filing's content and have authorized the filing.

4
5 DATED: September 2, 2022 TOBEROFF & ASSOCIATES, P.C.

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7 By: /s/ Marc Toberoff
8 Marc Toberoff

9 Attorneys for Plaintiff
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DISTRICT JUDGE SUNSHINE S. SYKES
SCHEDULE OF PRETRIAL AND TRIAL DATES WORKSHEET
Please complete this worksheet jointly and file it with your Joint Rule 26(f) Report.
The parties must make every effort to agree on dates or the Court will set them.

Case No. 22-cv-02152-SSS-PVC	Case Name: <i>DiSalle v. Lensi et al.</i>		
Trial and Final Pretrial Conference Dates	Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy	
Check one: <input checked="" type="checkbox"/> Jury Trial or <input type="checkbox"/> Bench Trial [Monday at 9:00 a.m. within 12-15 months of Scheduling Conference based on complexity] Estimated Duration: <u>4</u> Days	12/15/2023		11/17/24
Final Pretrial Conference ("FPTC" [L.R. 16], [Friday at 1:00 p.m. at least 17 days before trial])	11/17/2023		12/15/23
Event ¹ Note: All deadlines shall be on Fridays. Hearings shall be on Fridays at 2:00 p.m.	Time Computation ²	Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy
Last Date to <u>Hear</u> Motion to Amend Pleadings or Add Parties	6 weeks after Scheduling Conference	10/28/2022	
Fact Discovery Cut-Off (no later than deadline for filing dispositive motion)	27 weeks before FPTC	5/12/2023	6/12/23
Expert Disclosure (Initial)	26 weeks before FPTC	5/19/2023	6/19/23
Expert Disclosure (Rebuttal)	24 weeks before FPTC	6/2/2023	7/3/23
Expert Discovery Cut-Off	22 weeks before FPTC	6/16/2023	7/17/23
Last Date to <u>Hear</u> Motions • Rule 56 Motion due at least 49 days before hearing; Rule 56 Opposition due at least 35 days before hearing; Rule 56 Reply due at least 28 days before hearing. • Deadlines for all other motions are pursuant to L.R. 6-1, 7-9, 7-10.	11 weeks before FPTC	9/1/2023	10/2/23
Deadline to Complete Settlement Conference [L.R. 16-15] <u>Select one:</u> <input type="checkbox"/> 1. Magistrate Judge (with Court approval) <input type="checkbox"/> 2. Court Mediation Panel <input type="checkbox"/> 3. Private Mediation	8 weeks before FPTC	9/22/2023	10/23/23
Deadline to File Motions in Limine	6 weeks before FPTC	10/6/2023	11/6/23
Deadline for Oppositions to Motions in Limine	4 weeks before FPTC	10/20/2023	11/20/23
Trial Filings (first round) • Memoranda of Contentions of Fact and Law [L.R. 16-4] • Witness Lists [L.R. 16-5] • Joint Exhibit List [L.R. 16-6.1] • Joint Status Report Regarding Settlement • Proposed Findings of Fact and Conclusions of Law [L.R. 52] (bench trial only) • Declarations containing Direct Testimony, if ordered (bench trial only)	4 weeks before FPTC	10/20/2023	11/20/23
Trial Filings (second round) • Joint Proposed Final Pretrial Conference Order [L.R. 16-7] • Joint Agreed Upon Proposed Jury Instructions (jury trial only) • Disputed Proposed Jury Instructions (jury trial only) • Joint Proposed Verdict Forms (jury trial only) • Joint Proposed Statement of the Case (jury trial only) • Proposed Voir Dire Questions, if any (jury trial only) • Evidentiary Objections to Declarations of Direct Testimony (bench trial only)	2 weeks before FPTC	11/3/2023	12/4/23
Hearing on Motions in Limine	2 weeks before FPTC	11/3/2023	12/4/23

¹ The parties may seek dates for additional events by filing a separate Stipulation and Proposed Order.

² The numbers below represent the Court's recommended timeline. The parties may propose alternate dates based on the needs of each individual case. Class Actions, patent, and ERISA cases may need to vary from the above.